

Exhibit K

Plaintiff Westborough SPE LLC (“**Plaintiff**”) brings this Verified Complaint for declaratory and other relief, including under 42 U.S.C. §1983, and alleges, on knowledge as to its own actions, and otherwise upon information and belief:

1. PRELIMINARY STATEMENT

1. This civil action seeks to vindicate Plaintiff's constitutional and common law rights and hold responsible municipal defendants and co-conspirators accountable for their unlawful actions that deprived Plaintiff of 100% of its commercial real property located at 231 Turnpike Road, Westborough, Massachusetts ("**Locus**").

2. This lawsuit also seeks declaratory relief as to the constitutionality of M.G.L. c. 60, §§28 and 64, and actions of the Massachusetts Land Court vis-à-vis the tax title foreclosure process as applied to the Plaintiff.

3. Massachusetts tax deeds fail federal and Massachusetts due process scrutiny for two reasons. First, they allow municipalities like the Town of Westborough to keep property that is far beyond the amount for which they have a claim in violation of the Supreme Court's holding in *Tyler v. Hennepin Cty. Minnesota*, 598 U.S. 631 (2023). Second, they allow a municipality to take title from the taxpayer without providing a pre-seizure hearing. Neither problem is acceptable under constitutional analysis.

4. This case arises out of an actual case and controversy. The Town of Westborough, Massachusetts ("**Town of Westborough**") seized Plaintiff's commercial real property having an approximate fair market value of \$5,235,000.00 (\$9,264,800.00 assessed value) as payment for tax debt of \$119,628.17 in 2018, without a hearing, in a tax foreclosure process saddled with constitutional due process violations.

5. The Town of Westborough violated the Takings Clause of the United States Constitution when it took the Plaintiff's real property without compensation, and a property owner may bring a Fifth Amendment claim under §1983 at such time. *See Knick v. Twp. of Scott, Pennsylvania*, 139 S. Ct. 2162, 2164 (2019) citing *Jacobs v. United States*, 290 U.S. 13 (1933).

6. In *Wayside Church v. Van Buren S.*, 847 F.3d 812, 823 (6th Cir. 2017), Justice Kethledge stated in his dissent: “In this case the defendant Van Buren County took property worth \$206,000 to satisfy a \$16,750 debt, and then refused to refund any of the difference. In some legal precincts that sort of behavior is called theft.” A footnote in *Tallage Lincoln, LLC v. Williams*, 485 Mass. 449, 453 n.4 (2020), framed the constitutional issue this way:

Several of our sister States have determined that excess value from a tax taking must be made available to the taxpayer as a matter of constitutional law. *See, e.g., Thomas Tool Servs., Inc. v. Croydon*, 145 N.H. 218, 220 (2000) (tax lien procedure resulting in equity windfall to purchaser of tax deed violated takings clause of New Hampshire Constitution); *Bogie v. Barnet*, 129 Vt. 46, 55 (1970) (retention of excess value by town amounts to unlawful taking for public use without compensation contrary to Vermont Constitution).

In *Kelly v. Boston*, 348 Mass. 385, 388 (1965), [the Supreme Judicial Court (“SJC”)] considered the legislative history of the statutory scheme governing tax lien foreclosures and determined that the Legislature intended that the process result in forfeiture of the taxpayer's equity to the municipality. The parties in that case did not raise any constitutional challenge, and [the SJC] did not address the constitutionality of the statutory scheme.

7. As acknowledged in the quotation above from *Tallage Lincoln, LLC v. Williams*, *supra*, at least two other New England states have recognized that the tax lien and foreclosure process still used in Massachusetts is an unconstitutional taking of private property. Vermont led the way in *Bogie v. Town of Barnet*, 129 Vt. 46, 55, 270 A.2d 898 (1970). The Vermont Constitution, Chapter 1, Article 2, requires that “whenever any person's property is taken for the use of the public, the owner ought to receive an equivalent in money.” The court in *Bogie v. Barnet* held as follows (129 Vt. at 49, 270 A.2d at 900):

A policy which encouraged municipal governments to promote situations where it was authorized to acquire the property of its own taxpayers at unconscionable discounts, to the enrichment of the town treasury or enlargement of its land holdings, is fraught with danger and we find not contemplated by the legislative enactment.

8. The Supreme Court recognized the unconstitutionality of equity theft as far back as the 1800s in *United States v. Lawton*, 110 U.S. 146, (1884), when it said, in connection with a similar direct bidding-off by the United States in a tax sale:

To withhold the surplus from the owner would be to violate the fifth amendment to the constitution, and deprive him of his property without due process of law or take his property for public use without just compensation. If he affirms the propriety of selling or taking more than enough of his land to pay the tax and penalty and interest and costs, and applies for the surplus money, he must receive at least that.

The corresponding rights under the Vermont Constitution upon a taking by public authority appear in Chapter I, Article 2. Satisfaction of the statutory procedures, although they may meet the test of due process, does not negate the obligation to account for the excess proceeds received from the sale.

9. U.S. Constitution, Amend. 5, states that: “No person shall be ... deprived of ... property, without due process of law; nor shall private property be taken for public use, without just compensation.”

10. Massachusetts Courts are left with no option but to enforce Massachusetts law on tax title foreclosures and permit “equity theft”, because the legislature has failed to act quickly in response to newly enacted Supreme Court precedent established in *Tyler v. Hennepin Cnty.*, 598 U.S. 631 (2023) (“*Tyler*”).

11. The federal excessive fines standard under U.S. Const. Amend 8 (“Excessive bail shall not be required, nor excessive fines imposed”) is laid out in *United States v. Bajakajian*, 524 U.S. 321, 327–28 (1998). A fine is excessive when it is punitive and grossly disproportionate to the offense. *Id.* at 333–34. The law already gives municipalities, like the Town of Westborough in this case, a right to collect a tax debt with substantial interest and costs. Taking more than that is grossly disproportionate to the non-criminal failure to pay a debt, especially where the failure arises from poverty, medical problems, or lack of knowledge.

12. The Supreme Court is the “ultimate interpreter of the Constitution” and the United States Constitution is the “supreme law of the land.” *Baker v. Carr*, 369 U.S. 186, 211 (1962); *Cooper v. Aaron*, 358 U.S. 1, 18-20 (1958); U.S. Const. art. VI (Supremacy Clause).

13. Thus, it would be constitutional error to assert that the Massachusetts Land Court (“**Land Court**”) can stand by and wait for remedial state legislative action when it is required to implement the holding of *Tyler* immediately, especially as to Plaintiff’s dispute with the Town of Westborough.

14. The Land Court has an unfettered constitutional obligation, under the Due Process, Takings, and Supremacy Clauses of the United States Constitution, to cure the scourge of real property equity theft no matter if the Massachusetts General Court (“Legislature”) ever enacts any legislation.

15. The Land Court’s standard form tax lien complaint, employed by municipal tax lien foreclosure claimants as the starting point in any tax lien foreclosure case, awards successful claimants with “absolute title” to real property irrespective of how minimal the taxes owed are and how substantial the homeowner’s equity is when the Land Court judgment is entered. This directly contravenes the May 25, 2023 ruling in *Tyler*, the Takings Clause of the United States Constitution, and abridges fundamental constitutional property rights of real property holders, including those rights secured under the Due Process, Takings, and Supremacy Clauses of the United States Constitution.

16. By statute, M.G.L. c. 60, § 50B, every community in Massachusetts must include in its annual budget the necessary monies to pay for tax foreclosure proceedings. This appropriation is estimated by the municipal treasurer and must be at least \$80 for each tax title ripe for foreclosure held by the community involving property having a current assessed valuation greater than \$100,000.00. Massachusetts has ingrained and granted its imprimatur to the tax foreclosure practice as currently implemented through statutory enactment.

2. JURISDICTION

17. This Court has federal question jurisdiction over this action pursuant to 28 U.S.C. § 1331, in that this is a civil action arising under rights conferred by the United States Constitution and the Civil Rights Act of 1871, 42 U.S. Code §§ 1983 and 1988 to redress the deprivation under color of state law of rights secured by the United States Constitution, under 42 U.S.C. §§ 1985(2) and 1986, and federal law.

18. This Court also has original subject matter jurisdiction under 28 U.S.C. § 1343(a)(2).

19. This Court has ancillary jurisdiction over Massachusetts state-law claims under 28 U.S.C. § 1367.

20. This Court has subject matter jurisdiction over Plaintiff's declaratory judgment claims under 28 U.S.C. § 2201(a), 28 U.S.C. § 2202, and Fed. R. Civ. P. 57.

21. This Court also has subject matter jurisdiction pursuant to 28 U.S.C. § 1332. A limited liability company (LLC) is a citizen of all states in which each of its members is a citizen (*see Mgmt. Nominees, Inc. v. Alderney Investments, LLC*, 813 F.3d 1321, 1325 (10th Cir. 2016)). The 100% Member of Plaintiff is Mignonette Investments Limited, a British Virgin Islands limited partnership and thus the Plaintiff is only a citizen of the British Virgin Islands.

22. No Defendant has a citizenship of the British Virgin Islands and thus there is complete diversity.

23. The amount in controversy exceeds \$75,000.00 exclusive of interest and costs.

24. This Court has the authority to provide preliminary and permanent injunctive relief under Rule 65 of the Federal Rules of Civil Procedure.

25. This Court has personal jurisdiction over all defendants because they have made and established contacts within The Commonwealth of Massachusetts to permit the exercise of personal jurisdiction over them.

3. VENUE

26. Venue is proper in this district under 28 U.S.C. § 1391(b)(1), in that at least one defendant has its principal place of business in Boston, Suffolk County, Massachusetts and 28 U.S.C. § 1391(b)(2), in that a substantial part of the events or omissions giving rise to the claim occurred in this district.

4. PARTIES

27. Plaintiff Westborough SPE LLC (“**Plaintiff**”) is a limited liability company formed under the laws of the State of Delaware and does business in Westborough, Massachusetts. Plaintiff has a single 100% member: Mignonette Investments Limited — a British Virgin Islands limited partnership. Plaintiff was the record owner of the real property located at the Locus before the Town of Westborough’s unlawful actions.

28. Defendant Town of Westborough is a Massachusetts municipal corporation (“**Town of Westborough**”) having a usual place of business at 34 West Main Street, Westborough, Massachusetts 01581.

29. Upon information and belief, Defendant Shelby Marshall (“**Marshall**”), individually and in the official capacity as Select Board Member resides at 7 Charles Street, Westborough, Massachusetts 01581.

30. Upon information and belief, Defendant Ian Johnson (“**Johnson**”), individually and in the official capacity as Select Board Member resides at 9 Bertis Adams Way, Westborough, Massachusetts 01581.

31. Upon information and belief, Defendant Allen Edinberg (“**Edinberg**”), individually and in the official capacity as Select Board Member resides at 8 Nash Street, Westborough, Massachusetts 01581.

32. Upon information and belief, Defendant Sean Keogh (“**Keogh**”), individually and in the official capacity as Select Board Chair resides at 28 Longmeadow Road, Westborough, Massachusetts 01581.

33. Upon information and belief, Defendant Patrick Welch (“**Welch**”), individually and in the official capacity as Select Board Vice-Chair resides at 15 Chauncy Circle, Westborough, Massachusetts 01581.

34. Defendants Marshall, Johnson, Edinberg, Keogh, and Welch are collectively referred to as the (“**Select Board**”).

35. Upon information and belief, Defendant Peter Blaustein (“**Mr. Blaustein**”), individually, resides at 950 Vista Road, Hillsborough, California 94010. Mr. Blaustein is the son of F. Jan Blaustein Scholes, a former general counsel and executive at Babcock & Brown Administrative Services, Inc. and manager of Babcock & Brown Parallel Member LLC, its successor in interest and who transferred her manager role to Lolonyon Akouete and Denise Edwards by written agreement in accordance with the Plaintiff’s LLC Operating Agreement.

5. RIPENESS/STANDING

36. This case is ripe for adjudication because it has created a direct and immediate dilemma for the parties—the Town of Westborough has foreclosed on the Locus.

37. Plaintiff meets all three Article III standing requirements under *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61 (1992). Plaintiff has a personal stake in the outcome of this litigation because its real property (its most significant financial asset) has been improperly seized

by the Town of Westborough for the nonpayment of property taxes. The improper foreclosure of Plaintiff's real property at the Locus constitutes an injury in fact that this Court can redress. The Land Court, Judge Locke (given his control over the Trial Court), the Attorney General, and the Town of Westborough have the power to prevent the Town of Westborough's unlawful taking of Plaintiff's real property at the Locus.

38. The constitutional injuries endured by the Plaintiff, as detailed here, are directly traceable to Town of Westborough actors.

6. FACTS

a. TOWN OF WESTBOROUGH'S PREMATURE AND UNLAWFUL REQUEST FOR PROPOSAL ("RFP").

39. In or about early June 2022, the Town of Westborough issued an RFP by which it solicited offers to purchase the former Regal Cinema property located at the Locus, consisting of a lot of around 29 acres and containing a structure that was formerly used as a movie theater, which the Town of Westborough had acquired by foreclosure of a tax lien ("**RFP**").

40. The Select Board of the Town of Westborough ("**Select Board**") scored the proposals as "highly advantageous", "advantageous", or "least favorable" with respect to each of the five above criteria.

41. Question 5 in the RFP Addendum asked: Will the closing happen after the redemption period expires?" The Town of Westborough answered: "The Town is willing to consider closing on the property after the redemption period has expired, provided the closing occurs no later than January 30, 2023, and, further, that the Town may give preference to proposers who are willing to close on the property prior to the expiration of the redemption period." (Emphasis added).

42. Since the judgment of foreclosure in the tax lien case (Land Court Case # 19 TL 000768-HPS), issued on January 5, 2022, Plaintiff could petition the Land Court to redeem the property until January 5, 2023, which Plaintiff indeed did.

43. The Town of Westborough received three proposals to its RFP by the due date of July 25, 2022.

(a) The high bidder was Pulte Homes of New England, LLC, which offered \$7,942,000.00 and proposed to raze the existing movie theater structure and replace it with 108 non-age-restricted residential condominium units (“**Pulte Proposal**”). The Select Board for the Town of Westborough ultimately rejected this proposal.

(b) The other two proposals were commercial in nature:

(i) Lax Media LLC and its Massachusetts subsidiary proposed to re-open a movie theater.

(ii) Ferris Development proposed to make the property the second of its “Beehive” locations, an innovative approach to workspace for tradespeople. Beehive sites offer physical space for everyday trades (such as electricians, plumbers, painters, and carpenters). Ferris Development offered to pay \$2,875,000. Lax Media LLC and its Massachusetts subsidiaries proposed \$2,500,001.

44. According to the minutes and agendas of the Town of Westborough Select Board, they met in executive session to discuss the RFP matter at least seven times after receiving the RFP proposals. These executive sessions took place on August 2nd, August 23rd, September 6th, September 13th, September 27th, October 11th, and October 26th, 2022.

45. On November 2, 2022, the Town of Westborough Select Board met in open session to discuss the RFP matter. They took less than five minutes to announce that they had given Lax

three ratings of “highly advantageous” and two of “advantageous (without specifying which of the criteria won each rating); Ferris Development received two (2) ratings of “highly advantageous”, three (3) ratings of “advantageous”, and Pulte received two (2) ratings of “highly advantageous”, one (1) rating of “advantageous”, and two (2) ratings of “least advantageous”.

46. The Select Board then voted on November 2, 2022 to award the purchase and sale agreement to the Lax entities. Under the terms of the RFP, The Town of Westborough and Lax were to enter into a purchase and sale agreement within 30 days from the date of the vote.

47. The Town of Westborough, going through the RFP process highlighted above, shows that the Town of Westborough initially decided not to sell the property through the tax title process described in M.G.L. c. 60.

48. The Town of Westborough’s action of going through the RFP and selecting the Lax Entities as the winning bidder illustrates that the Town of Westborough, its Select Board, Attorney, Town Manager, and Chief Assessor have recklessly disregarded their obligation to pay fair market value for the taken property. By not selecting the highest bidder Pulte, the Town has sought to minimize the value paid to the Plaintiff in violation of law.

49. The Town of Westborough through their RFP process failed to follow their own criteria. “A public authority [like the Select Board of the Town of Westborough] inviting bids may not, like Humpty Dumpty, choose to let words it uses in an invitation mean what the public authority chooses those words to mean. When words in an invitation are invested with a meaning known only to the issuer of the invitation to bid, the legislative aims that bids be submitted on a common basis is thwarted. Fairness and equality require that bidders have the opportunity to bid in the same way and on the same information such that they bear the same risk of rejection.” *See White’s Farm Dairy, Inc. v. City of New Bedford*, 1999 Mass. Super. LEXIS 294 at *34-35.

50. The Town of Westborough flouted their legal duty by offering the Locus up for sale before adjudication of Plaintiff's property rights.

51. The Select Board for the Town of Westborough rated the Lax Entities' proposal higher than that of Ferris Development because the Town expected that the Lax entities' proposal would generate higher tax revenue than that of Ferris Development.

52. The property valuations relied upon by the Town of Westborough in determining projected tax revenue are facially suspect. The assessors claimed to estimate that Lax Entities' proposal would yield a property worth \$9,329,750, while Ferris Development's would produce a fair market value of only \$5,501,830. It strains credulity to suggest that Ferris Development would invest \$2,875,000 to purchase the property and another \$2 million +/- to develop it only to be content with a resulting parcel worth scantily more than the purchase and development cost. Given the contraction in the movie theater use segment in recent years, and the example of the failure of a cinema use on the very site that was at issue, it is unlikely that Lax entities could almost quadruple its purchase money investment by continuing a movie theater use. No real estate valuation professional in the United States would assign a higher valuation or capitalization rate to a movie theater than to a shared work storage space or housing units.

53. This constitutes prima facie evidence that the Town of Westborough was covering up a process that did not follow its own RFP, that violated the Plaintiff's constitutional rights, and that defies economic logic—seeking to resume a prior failed use of the property as a movie theater.

54. While “The town has broad power to control and dispose of real property on the terms and conditions it deems appropriate,” and is not required to “transfer land to the highest bidder” (*see Mangano v. Town of Wilmington*, 51 Mass. App. Ct. 857, 859 (2001)), Towns must not violate bedrock constitutional principles in the exercise of their discretion.

55. The Town of Westborough has stated on the record in a Plymouth County Superior Court proceeding:

“the Town had a rational basis for accepting Lax Media’s proposal over that of [Ferris Development Group] because Lax Media’s proposal provided greater financial benefits to the Town and was able to proceed more quickly than FDG’s, even if FDG’s proposal reflected greater financial resources. Because Lax Media and FDG received the same score on price proposal and sustainability, and the Select Board reasonably determined Lax Media’s proposal was better than FDG’s on two of the three remaining criteria, the Town’s decision was not arbitrary and the Court should not substitute its judgment for that of the Select Board. Because the Select Board’s decision was based on grounds upon which reasonable persons would rely, FDG does not have a likelihood of success on the merits of its claims here.”

See Opposition of the Town of Westborough, *Ferris Development Group, LLC v. Town of Westborough et als.*, Superior Court Dept. Civil Action #2285cv01281 (Worcester Cty.) at pp. 12-13.

56. Furthermore, the Chief Assessor for the Town of Westborough stated:

“The Assessor estimated Lax Media’s use of the Property as a cinema would produce an estimated \$192,507.33 in tax revenue annually, which was significantly more than [Ferris Development Group’s] estimated annual tax revenue of \$101,821.29 because of the more developed state the facility would be in as a cinema as opposed to a warehouse and meeting place for tradespeople...Moreover, the cinema use would also bring in tax revenue through ticket sales and meals taxes and personal property taxes on the high-technology fixtures installed...The cinema use would provide an evening destination for the entire community, stimulating nearby restaurants, whereas [Ferris Development Group’s] proposal is an untested experiment following in the footsteps of the failed WeWork business model...[Ferris Development Group’s] dismissal of the number of jobs Lax Media’s cinema use would create is remarkable given that the cinema was estimated to create 10 full-time jobs, 20 part-time jobs, and several seasonal jobs...”

See Id. at pages 13-14.

57. The Town of Westborough has a self-interest that it believes contravenes Plaintiff’s constitutional rights—generating increased tax revenues for the Town of Westborough (which are suspect and speculative justifications), creating jobs, and continuing a prior use as it will have a lower effect on municipal services. This is all to the detriment of Plaintiff’s Constitutional rights.

b. The Town of Westborough and Its Agents Engaged in An Unconstitutional Taking of Property Without Just Compensation.

58. The Land Court, by request of the Town of Westborough, has granted official imprimatur to an unconstitutional practice. It is the practice—sanctioned by statute¹—of using unpaid real estate property taxes to seize real property for a municipality’s own benefit, selling (or attempting to sell) it for amounts that far exceed the amount of unpaid taxes, retaining not just the amount owed for unpaid taxes, but all of the sale proceeds, including all of the property owner’s equity in the real property. This is the practice of “equity theft”.

59. The Town of Westborough’s desire to retain the value of sale proceeds in excess of the unpaid taxes due on real property and associated charges violates the United States Constitution’s prohibitions on the taking of private property for public use without just compensation and constitutes an excessive fine for the nonpayment of property taxes.

60. The willful intent has been manifested not only by the Town of Westborough Select Board, but also by and through its attorneys, treasurer/collector, and Town of Westborough officials and agents. This intent has been publicly broadcast in newspapers throughout Massachusetts.

See, *e.g.,*

¹ M.G.L. c. 60, § 53 provides, “If a tax on land is not paid within fourteen days after demand therefor and remains unpaid at the date of taking, the collector may take such land for the town, first giving fourteen days’ notice of his intention to exercise such power of taking, which notice may be served in the manner required by law for the service of subpoenas on witnesses in civil cases or may be published, and shall conform to the requirements of section forty five. He shall also, fourteen days before the taking, post a notice so conforming in two or more convenient and public places . . .”

M.G.L. c. 60, § 54 provides in pertinent part, “The instrument of taking shall be under the hand and seal of the collector and shall contain a statement of the cause of taking, a substantially accurate description of each parcel of land taken, the name of the person to whom the same was assessed, the amount of the tax thereon, and the incidental expenses and costs to the date of taking. Such an instrument of taking shall not be valid unless recorded within sixty days of the date of taking. If so recorded it shall be prima facie evidence of all facts essential to the validity of the title so taken”

<https://www.metrowestdailynews.com/story/news/2022/08/05/westborough-ma-fields-proposals-former-regal-cinemas-property/10230187002/> (accessed August 17, 2023).

61. The Land Court has refused to impose any administrative orders or a moratorium on tax title foreclosure cases in The Commonwealth based on the United States Supreme Court *Tyler* decision.

62. The Land Court has stated that if a municipality or other plaintiff in a tax foreclosure case seeks to foreclose on a tax title, that Massachusetts law permits this to occur and that any resulting risk of liability, including for compensation owed to the former owner, is for the municipality to consider and assess in proceeding. Accordingly, the Massachusetts Land Court has vitiated the central holding of *Tyler* which prohibits municipalities from confiscating equity after conducting tax lien foreclosure sales.

63. The Land Court has refused to immediately honor the *Tyler* ruling and has continually issued *absolute* titles in violation of federal law and Supreme Court precedent, especially in 19 TL 000768-HPS that applies to the Plaintiff.

64. Since the Land Court has exclusive statutory jurisdiction over all tax lien foreclosure cases in Massachusetts, these cases must be litigated exclusively in the Land Court, which controls discovery, the course of proceedings, and enters judgments which have violated the core tenets of *Tyler*, especially through the foreclosure final judgment issued in *Town of Westborough v. Westborough SPE, LLC, et als.*, 19 TL 000768 (Land Ct. applies

65. The Land Court's standard form tax lien complaint is unconstitutional because it seeks to award "absolute title" which violates *Tyler*.

66. Every "absolute title" awarded by the Land Court, through judgments entered upon standard form tax lien complaints from May 25, 2023 to present date and beyond, is and will be

void ab initio—and of no legal force and effect. All such judgments, and the land titles to which they relate, will be subject to collateral attack for years to come because the Land Court has refused to comply with *Tyler* from the decision date. If “the court which renders judgment has no jurisdiction to render it, either because the proceedings, or the law under which they are taken, are unconstitutional, or for any other reason, the judgment is void and may be questioned collaterally...” *In re Neilson*, 131 U.S. 176, 182 (1889).

67. These tax title foreclosure judgments and land title litigations will continue for years and will infect thousands of land titles going forward, opening the floodgates to litigation on this issue.

68. By adhering to the rule of law announced in *Tyler*, the Land Court could minimize these invalid judgments and land titles.

69. The Land Court’s obligation to uphold constitutional rulings of the United States Supreme Court is not subject to or conditioned upon any antecedent action by the Massachusetts General Court (“Legislature”) or any other legislative body. No legislative action is required to implement the core *Tyler* ruling given the Land Court’s exclusive jurisdiction over tax lien foreclosure cases and its mechanical and administrative ability to ensure that no municipal tax lien claimant is ever awarded with any tax lien judgment which embeds the right to “take” real property equity.

70. Courts, such as the Land Court, cannot stand idle and watch municipalities like the Town of Westborough violate the United States Constitution based on the inaction of a legislative body, especially where there is an active case and controversy.

The Town of Westborough Initiates a Tax Taking Against Plaintiff

71. On January 16, 2019, the Town of Westborough recorded an instrument of Tax Taking under M.G.L. c. 60, §§ 53 and 54 against the Locus for nonpayment of property taxes.

72. On July 8, 2019, the Town of Westborough commenced the action to foreclose the tax lien (*Town of Westborough v. Westborough SPE, LLC, et als.*, Massachusetts Land Court, Case # 19 TL 000768-HPS).

73. On July 24, 2019, a Notice of the foreclosure action was recorded in the Worcester District Registry of Deeds at Book 60751, Page 221.

74. On August 26, 2019, a Land Court Title Examiner, Michael H. Delaney, Esq. (“Attorney Delaney”), completed and subsequently filed a Title Report under M.G.L. c. 60, § 66, and reported that the parties interested and entitle to notice were “Westborough SPE, LLC c/o Babcock & Brown Administrative Services, Inc....Att’n Dyann Blaine and/or F. Jan Bluestein” and “Interstate Theaters Corporation”.

75. Plaintiff acquired its ownership interest in the Locus by Quitclaim Deed recorded at Book 19369, Page 75 in the Worcester District Registry of Deeds on November 21, 1997 (“Deed”). The Deed stated that the grantee was Westborough SPE LLC, a Delaware limited liability company with a principal place of business at c/o Babcock & Brown Administrative Services, Inc., Two Harrison Street, San Francisco, CA 94105. Westborough SPE LLC paid \$9,151,449.00 in consideration for the Locus in 1997.

76. Upon information and belief, Attorney Delaney searched the online records of The Secretary of The Commonwealth of Massachusetts Corporations Division (“MA Corporations Division”) for Westborough SPE LLC. The MA Corporations Division is a mere repository of corporate filings and no one at the MA Corporations Division can confirm or deny the accuracy of any document filed with it, except to confirm the date and time said document was filed.

77. Upon information and belief, Attorney Delaney did not search any records of the Secretary of State for the State of Delaware Corporations Division.

78. Had Attorney Delaney searched he would have discovered that Babcock and Brown Administrative Services, Inc. had become Babcock and Brown Administrative Services LLC which later merged into Babcock and Brown Parallel Member LLC, a Delaware limited liability company.

79. Thus, Babcock and Brown Parallel Member LLC was the successor-in-interest manager to Babcock and Brown Administrative Services, Inc.

80. Babcock and Brown Parallel Member LLC was never provided notice of the foreclosure.

81. When the Town of Westborough “took” Plaintiff’s Property with the judgment of foreclosure entering on January 5, 2022, through a tax taking that violated due process (including, but not limited to improper notice), it did not pay for said property.

82. Plaintiff has been deprived of all use and benefit of its real property at the Locus since the Town of Westborough’s tax title foreclosure, and Plaintiff has received no compensation whatsoever. The only thing that the Town of Westborough has done was force Plaintiff to have incurred significant legal expenses because of the Town of Westborough and their agents’ unconstitutional actions.

83. The Town, through its Tax Collector/Treasurer, asserted that it is due the sum of \$918,314.60 for taxes, interest, and incidental expenses as through May 16, 2023. See **Exhibit A** attached and incorporated by reference. The Tax Collector in the affidavit readily concedes though that this sum is no longer accurate. On May 3, 2023, Linda A. Smith, Treasurer/Collector for the Town of Westborough (“Town Treasurer”) certified that as of May 16, 2023 (“**Town’s**

Certification”), a grand total of \$918,314.60 was owed, consisting of: \$119,628.17 (2018 Taxes), \$103,133.80 (2019 Taxes), \$10-2,963.48 (2020 Taxes), \$55,915.95 (2021 Taxes), \$36,885.70 (2021 Taxes), and \$35,183.54 (2023 Taxes). It also included interest in the amount of \$239,341.73, \$58,138.22 in legal fees owed to KP Law and The Law Offices of Iris A. Leahy, Esq., miscellaneous water and sewer liens, NSTAR lien, \$14,438.55 to Boston Board Up, \$109,882.55 in insurance costs, \$6000 in appraisal costs, \$20,591.22 for a Request for Proposal (RFP) bid process to sell the Locus, and other miscellaneous recording costs and fees as Itemized in **Exhibit A**.

84. The Town Treasurer certified in the Town’s Certification that the 2023 assessed value of the Property is currently \$2,082,000.00 compared with \$9,264,800.00 in 2018. According to the Town of Westborough’s Appraisal, the market value of the Locus is \$4,790,000 as of August 3, 2018 as determined by Mark S. Reenstierna, Massachusetts Certified General Real Estate Appraiser #3803 communicated to Jonathan Steinberg, MAA, Chief Assessor for the Town of Westborough on September 4, 2018. A second appraisal was performed by William J. Pastuszek, Jr., MAI, SRA, MRA, Massachusetts Certified General Real Estate Appraiser License #10 on behalf of Shepherd Associates, LLC for the Town of Westborough and determined that the as-is opinion of value of the fee simple interest in the Locus as of January 28, 2018 was \$5,500,000 to \$6,000,000.

85. Attorney Iris A. Leahy (“**Attorney Leahy**”) and attorneys from KP Law, P.C. (“**KP Law**”), acting on behalf of the Town of Westborough, were encouraged to allow the Town of Westborough’s tax title foreclosure of the Locus, because they have earned and continue to earn substantial legal fees stemming from the Plaintiff’s challenge.

86. The Locus consists of a parcel of land containing about 29.34 acres (around 1,277,876 square feet) improved with a single-story movie theater.

87. On March 16, 2023, David M. Ferris, Esq. on behalf of Ferris Development Group, LLC executed a contingent Offer to Purchase the Locus for \$2,400,000.00 (“**Minimum Current Market Price**”).

88. The Town’s Certification stated that the assessed value of the Locus for 2023 is \$2,082,000.00. Current Minimum Market Price is \$2,400,000.00. The surplus (“**Surplus**”), consisting of the market value less outstanding taxes, interest, charges of keeping, and charges of sale, as of May 16, 2023, exceeded \$918,314.60 (minimum amount of “equity theft”) as alleged in the Town’s Certification. See M.G.L. c. 60, § 28.

89. Assuming arguendo that the Town decided to proceed with Pulte’s offer during the RFP of nearly \$7 Million, the resultant “equity theft” as of May 16, 2023 would have been nearly \$6,081,685.40.

90. Under current Massachusetts law, the Town of Westborough is entitled to this Surplus when and if the Town sells the Property subject only to additional permissible deductions, under M.G.L. c. 60, § 28, due, once again, to the mere passage of time.

91. The Town of Westborough has stated that it refuses to release the proceeds to Westborough SPE LLC’s duly authorized successor managers, Lolonyon Akouete, and Denise Edwards according to the records of the Massachusetts Secretary of The Commonwealth Corporations Division and the Secretary of State for the State of Delaware Corporations Division, the Durable Power of Attorney (governed by Delaware law) executed by F. Jan Blaustein Scholes as Manager (“Ms. Scholes”) of Babcock and Brown Parallel Member LLC as successor in interest

to Babcock and Brown Administrative Services, Inc. and a Written Consent of Manager signed by Ms. Scholes.

92. Ms. Scholes executed and had notarized the Durable Power of Attorney and Written Consent of Manager in Maricopa County, Arizona.

93. Plaintiff's LLC Operating Agreement is governed by Delaware law and allows for an existing manager to transfer the role of manager to another manager or co-manager.

94. Plaintiff's LLC Operating Agreement does not allow a Manager to resign as Manager without Member Consent.

95. No Member Consent was ever provided for the resignation of any manager by Mignonette Investments Limited.

The Town of Westborough Has Informed Plaintiff's Managers That It Will Refuse to Tender Proceeds to the Plaintiff

96. The command of M.G.L. c. 60, § 28 is clear: "The collector shall *upon demand* give a written account of every sale on distress or seizure and charges, and pay to the owner any surplus above the taxes, interest and charges of keeping and sale."

97. The Town of Westborough has stated that it will refuse to tender sale proceeds to Plaintiff's Managers even though Plaintiff is a manager-managed LLC.

98. Since Plaintiff timely made a statutory demand, it is entitled to "any surplus" after payment of the expenses under M.G.L. c. 60, §28. Attempts to place a contrary construction upon M.G.L. c. 60, §28 would violate the Due Process Clause since "the touchstone of due process is the protection against the arbitrary action of the government..." *Wolf v. McDonnell*, 418 U.S. 539, 558 (1974).

99. There is no legal, equitable, or factual base on which the Town of Westborough could assert that it may retain any surplus from a sale for itself.

100. The Town of Westborough's actions to seize the Surplus violates the Fifth Amendment, Due Process Clause, Federal Civil Rights Act (42 U.S.C. § 1983), M.G.L. c. 60, § 28, and common law (including, but not limited to conversion, fraud, and deceit), and the retention of any such Surplus, within the meaning of M.G.L. c. 60, § 28, would violate Massachusetts criminal larceny statutes. *See* M.G.L. c. 266, § 30(1).

C. Unconstitutional Documents/Postings by The Land Court.

101. The Home Page of the Land Court website, which upon information and belief is operated by the Land Court, states: "A tax lien foreclosure is a type of court case in which a city or town (or sometimes a third party) can seek to obtain full ownership of property if the property taxes, water bills, or sewer bills are not paid..." (Emphasis added). *See* Land Court Website, <https://www.mass.gov/land-court-tax-lien-foreclosure-cases-resources#:~:text=The%20Land%20Court%20has%20jurisdiction%20over%20all%20tax%20lien%20foreclosures%20in%20Massachusetts> (accessed August 14, 2023).

102. Land Court websites have spread false information that contradicts the Supreme Court's holding in *Tyler* and that the Town of Westborough and other municipalities rely contradicts.

103. The Land Court Homepage Link - "Simple Chart of the Tax Lien Foreclosure Process" states at Section #8: "If you do not pay the amount back by a certain date, the plaintiff can file a motion for judgment and hearing notice. The Court will schedule a hearing on the Motion for Judgment. At this hearing, the Court may make a judgment of foreclosure. *If the Court makes a judgment of foreclosure, your ability to get the property back ends, and the plaintiff gets full ownership of the property. You will lose the whole property, even if it is worth much more than you owe.* (See FAQ #18 and FAQ #19)". *See* <https://www.mass.gov/doc/simple-introductory-tax-lien-flowchart/download> (Accessed August 14, 2023) which is incorporated by reference.

104. The Massachusetts Standard Form Tax Lien Complaint – Form TL-5 (04-2021) at Section #5 states: “Plaintiff(s) requests that the Court enter judgment foreclosing all rights of all persons entitled to redeem and declaring that title to the described real estate is **absolute** and that all rights of redemption are barred. Plaintiff(s) requests such other and further relief as the Court deems proper.” (Emphasis Added). *See* <https://www.mass.gov/doc/tax-lien-complaint/download> (Accessed August 14, 2023) which is incorporated by reference.

105. The Land Court’s online Tax lien foreclosure informational outline states: “A tax lien foreclosure is a process through which you can lose ownership of your property if you do not pay your real estate taxes or water/sewer bill. This can result in you losing all of your property’s value, even if the amount you owe is much less than your property’s value.” *See* <https://www.mass.gov/info-details/tax-lien-foreclosure-informational-outline> (Accessed August 14, 2023) which is incorporated by reference.

COUNT ONE

DECLARATORY RELIEF

106. Plaintiff repeats and realleges the paragraphs above.

107. Upon any sale of the Property by the Town of Westborough, if it effects such a sale, it is demanded that the Town and its Treasurer/Tax Collector, comply with the dictate of M.G.L. c. 60, § 28. The cited statutory subsection embeds the constitutional requirements of the Takings Clause of the Fifth Amendment to the United States Constitution (“Fifth Amendment”) into it. “The Takings Clause of the Fifth Amendment states that ‘private property [shall not] be taken for public use, without just compensation.’” *Knick v. Scott*, 588 U.S. ____ (2019) Slip. Op. at p. 1. (brackets in original). “A property owner has an actionable Fifth Amendment takings claim when the government takes his property without paying for it.” *Id.*, 588 U.S. ____ at 2. The “property

owner has suffered a violation of his Fifth Amendment rights when the government takes his property without just compensation...” *Id.*

108. On January 05, 2022, Final Judgment entered as to tax-taking by the Town of Westborough in the Land Court case (19 TL 000768-HPS) at the Locus.

109. Plaintiff is entitled to a declaration that if the Town of Westborough sells the Locus that Plaintiff is entitled to the difference between the amount owed and what the property sells for.

110. Plaintiff is entitled to a declaration that as a result of the Town of Westborough and its agents’ unconstitutional behavior that it must forfeit any interest on amounts owed by Plaintiff for property taxes.

111. Plaintiff is entitled to a declaration that as a result of the Town of Westborough and its agents’ unconstitutional behavior that it shall not be entitled to collect legal fees and costs incurred by Attorney Leahy and KP Law.

112. Plaintiff is entitled to a declaration as to the rights and obligations of Plaintiff and Defendants vis-à-vis the constitutionality of holding an RFP prior to expiration of Plaintiff’s right of redemption period.

113. Plaintiff is entitled to a declaration as to the constitutionality of the Massachusetts tax-title foreclosure process as it has been directly applied by the Town of Westborough to Plaintiff.

COUNT TWO

UNCONSTITUTIONAL TAKING UNDER THE FIFTH AMENDMENT OF THE UNITED STATES CONSTITUTION; VIOLATION OF 42 U.S.C. § 1983

114. Plaintiff repeats and realleges the paragraphs above.

115. Defendants at all times relevant to this action were acting under color of state law.

116. Defendants unlawfully deprived Plaintiff of 100% of its real property located at the Locus without just compensation and without due process of law, all in violation of the Fifth and Fourteenth Amendments to the United States Constitution.

117. This claim is being made pursuant to 42 U.S.C. § 1983 and § 1988.

118. The Fifth Amendment of the United States Constitution, made applicable to the states via the Fourteenth Amendment, is a constitutional provision and right requiring the payment of just compensation upon a taking of private property by Defendants. *See Knick v. Twp. Of Scott*, 588 U.S. ____ (2019).

119. The Town of Westborough's actions and those of the 1983 Defendants vis-à-vis tax title foreclosure of the Locus have constituted a complete taking of Plaintiff's real property without any compensation for such taking.

120. James Malloy, the former Town Manager for the Town of Westborough stated in a November 29, 2018 article in the Westboro Telegram & Gazette "the town will have to hold on to the money from the new owner for three years in case a claim is filed against the town...[Malloy] said that would not stop the selling and development of the property." *See Exhibit B* attached and incorporated by reference. The Town of Westborough had actual knowledge that selling the Locus in an RFP could subject the Town of Westborough to liability.

121. At all times relevant hereto, the defendants acted under a policy or custom of the Town of Westborough of depriving real property owners that owe unpaid property taxes of their real property to avoid having to pay compensation in an eminent domain proceeding.

122. In an Affidavit dated May 14, 2020, by Shirin Everett, Esq. of KP Law, P.C., legal counsel to the Town of Westborough, Attorney Shirin stated: "We advised the Town Manager that if real estate taxes were not being paid [at the Locus], the Town [of Westborough] could eventually acquire the title to the Property through a Land Court foreclosure process. We advised the Town

as to the steps the Town needs to take to demand payment of WSPE [Plaintiff], to record an Instrument of Taking after waiting the statutory 14-day period, and filing a petition to foreclose on the Property in Land Court.” See **Exhibit C** at Paragraph #6, attached and incorporated by reference for the Affidavit of Shirin Everett, Esq. (“**Attorney Affidavit**”).

123. Attorney Shirin further notes that “[a] vote taken under Article 18 of the March 6, 2018 Annual Town Meeting, authorized the Board of Selectmen [for the Town of Westborough] to acquire the Property [the Locus] by eminent domain for economic revitalization and general municipal purposes, and appropriated the sum of \$6,000,000 to pay damages for the Property and to pay for costs incidental or related thereto. It was the Town’s intent that, should it take the Property by eminent domain rather than through the tax-foreclosure process, it would pay damages to WSPE [Plaintiff] or to any other entity or person that established that it owned the Property.” *nonpayment* at Paragraph #10.

124. The Town of Westborough’s unconstitutional municipal policy, practice, and custom vis-à-vis tax-title foreclosure in-lieu of condemnation proceedings to avoid having to pay just compensation for the taking of real property (“**Tax-Title Foreclosure Policy**”) was the moving force of the constitutional violation suffered by the Plaintiff. See *Monell v. Dep’t of Soc. Servs. Of City of New York*, 436 U.S. 658, 694-95 (1978).

125. Not only was the Town of Westborough’s formal Tax-Title Foreclosure Policy caused the violation of Plaintiff’s constitutional rights, but also it was designated employees with final policymaking authority that caused the rights violation, including Attorney Everett (KP Law), the Town Manager, and the Board of Selectmen.

126. All these aforementioned parties were either employees of the Town of Westborough, engaged in the business of the municipality, or were acting with the authority granted to them by the Town of Westborough.

127. Attorney Everett (KP Law) acted jointly with the Town of Westborough and acted under an engagement letter authorized by the Town of Westborough.

128. Peter Blaustein acted jointly with the government and was under the Town of Westborough's control, where Town Counsel, Attorney Leahy, drafted a "Waiver of Notice and Assent to the Entry of Judgment" for Peter Blaustein to sign, have notarized, and which was filed in Land Court proceeding 19 TL 000768-HPS on May 4, 2023. In that document, Peter Blaustein claimed to be a "Party of Interest by and/or through a Power of Attorney, as Court-Appointed Guardian, and as Conservator for F. Jan Blaustein a/k/a Jan Blaustein Scholes, in the above-referenced tax lien case, hereby waives her right to notice and assents to the previous entry of judgment with regards to the parcel listed below [Locus]". See **Exhibit D** attached and incorporated by reference. This document had a prejudicial effect on the Land Court proceeding and Plaintiff through its legal counsel moved to strike said document, but the Land Court Judge refused to strike said document from the Docket.

129. Defendants' actions did not substantially advance a legitimate state interest.

130. Defendants' policy and practice regarding tax title foreclosure of the Locus has denied Plaintiff any viable use of their property.

131. The Town of Westborough has taken Plaintiff's property for public use without providing just compensation.

132. The Town of Westborough provided no compensation to Plaintiff for the taking of their real property, thereby depriving Plaintiff of their constitutional rights in violation of the Fifth Amendment of the United States Constitution.

133. The Town of Westborough interfered with Plaintiff's distinct, investment-backed expectations as to their business and real property.

134. As a result of Defendants' actions and failure to pay just compensation, Plaintiff has been injured and suffered damages in an amount to be determined at trial.

135. Defendants cannot assert a compelling interest for disregarding Plaintiff's long-established constitutional property rights.

136. The Land Court's conduct has caused and will continue to cause Plaintiff to suffer immediate and irreparable harm to its constitutional rights to due process. No money damages can remedy this harm because real property is unique, and Plaintiff has no legal avenue by which to recover any money damages against the Town of Westborough.

COUNT THREE

VIOLATION OF 42 U.S.C. §§ 1985(2) and 1986

142. Plaintiff repeats and realleges the paragraphs above.

143. The first clause of § 1985(2) permits an action for damages when:

"two or more persons in any State or Territory conspire to deter, by force, intimidation, or threat, any party or witness in any court of the United States from attending such court, or from testifying to any matter pending therein, freely, fully, and truthfully, or to injure such party or witness in his person or property on account of his having so attended or testified."

144. § 1986 permits damages against any:

"person who, having knowledge that any of the wrongs conspired to be done, and mentioned in [§ 1985], are about to be committed, and having power to prevent or aid in preventing the commission of the same, neglects or refuses so to do."

145. § 1985(2), “contain[s] no language requiring that the conspirators act with intent to deprive their victims of [constitutional rights].” *Kush v. Rutledge*, 460 U.S. 719, 725 (1983).
146. The Town of Westborough, Town of Westborough Select Board, Attorney Leahy, KP Law, Peter Blaustein, Dyann Blaine, and Walter Horst conspired to deter, by force, intimidation, and threats, F. Jan Blaustein Scholes from testifying freely, fully, and truthfully.
147. Furthermore, upon information and belief, Peter Blaustein has told F. Jan Blaustein Scholes that he would not allow her to move to a nicer nursing home facility if she continued “cooperating” with Lolonyon Akouete and Denise Edwards, the successor managers of the Plaintiff. Mr. Akouete and Ms. Edwards owe a fiduciary duty to the Plaintiff to ensure that its greatest asset—real property at the Locus—is not wrongfully seized by the Town of Westborough for payment of outstanding tax obligations amounting to a mere fraction of the real property’s value.
148. Upon information and belief, the Select Board and KP Law had actual knowledge of Attorney Leahy’s actions in wrongfully contacting Mr. Horst, Ms. Blaine, Peter Blaustein, and F. Jan Blaustein Scholes, witnesses in the Land Court proceeding (19 TL 000768-HPS).
149. Neither the Select Board nor KP Law, who had the power to stop Attorney Leahy’s improper actions, acted to so stop Attorney Leahy.
150. As a result of defendants’ conduct, Plaintiff suffered damages in an amount to be determined at trial.

COUNT FOUR

**EXCESSIVE FINES VIOLATION OF THE UNITED STATES CONSTITUTION
(AGAINST TOWN OF WESTBOROUGH)**

151. Plaintiff repeats and realleges the paragraphs above.
152. The Eighth Amendment to the United States Constitution prohibits the imposition of excessive fines.
153. Confiscating the entire value of Plaintiff's real property, including the excess or surplus equity in Plaintiff's property because of non-payments of real estate taxes is an excessive fine under the Eighth Amendment to the United States Constitution.
154. Defendant is engaged in assessing and collecting prohibited excessive fines.
155. Plaintiff faces a threat of irreparable harm if, after a trial on the merits, a permanent injunction is not granted, in that there is a threat that its property rights will continue to be violated by Defendant.
156. Plaintiff has no adequate legal remedy to protect their property interests from the ongoing unconstitutional and unlawful conduct herein described.
157. Plaintiff has been injured and damaged by the unlawful excessive fines under the United States Constitution and is entitled to relief as a result.

WHEREFORE, Plaintiff requests judgment as follows:

- A. Enter an order that the Defendants have violated Plaintiff's constitutional rights by taking its real property for public use without just compensation and violating Plaintiff's due process rights;
- B. Enter an order for damages and/or compensation for the value of the real property taken by Defendants;

- C. Enter an order for all damages available under federal law as applicable, including, but not limited to, an award for nominal and punitive damages;
- D. Issue a Declaratory Judgment that M.G.L. c. 60, § 28 is unconstitutional as applied and/or facially;
- E. Issue a Declaratory Judgment that M.G.L. c. 60, §§ 53 and 54 are unconstitutional as applied and/or facially;
- F. Issue a Declaratory Judgment that Massachusetts' statutory scheme of tax title takings and allowance for "equity theft" is unconstitutional;
- G. Issue a Declaratory Judgment that the Town of Westborough's appropriation of Plaintiff's real estate equity is an excessive fine in violation of the United States Constitution;
- H. Issue a Declaratory Judgment that as a result of the Town of Westborough's actions, by and through its Select Board, and agents, that legal fees paid to further the Town's unconstitutional and/or unlawful actions should be removed from amounts Plaintiff owes to the Town;
- I. Issue preliminary and permanent injunctions enjoining the Land Court, Town of Westborough, and Judges of the Trial Courts of The Commonwealth of Massachusetts from enforcing the foregoing challenged statutory provisions until further order of this Court.
- J. Issue such other declarations as are necessary and proper for a full adjudication of this matter as presented to the Court;

- K. Award Plaintiff costs and attorneys' fees under 42 U.S.C. § 1988, or under any other applicable statute or authority.
- L. Grant Plaintiff any other relief that the Court deems just and proper.

JURY DEMAND

Plaintiff demands a trial by jury on all issues so triable.

Dated: August 31st, 2023

Respectfully submitted,

WESTBOROUGH SPE LLC, Plaintiff,

By its attorneys,

Scott A. Schlager

By: _____
Scott A. Schlager, BBO#695421
Nathanson & Goldberg, P.C.
183 State Street, 5th Floor
Boston, Massachusetts 02109
Tel. (617) 909-4511
Fax. (617) 210-4824
sas@natgolaw.com

VERIFICATION

I, Lolonyon Akouete, declare as follows:

1. I am the co-Manager of Westborough SPE LLC, a Delaware limited liability company, Plaintiff in the above-captioned case. I have authorized the filing of this complaint and in accordance with the limited liability company operating agreement of Plaintiff.
2. I have personal knowledge of myself, my activities, and my intentions, including those set out in the foregoing Verified Complaint for Declaratory and Other Relief, and if called on to testify I would competently testify about these matters.
3. I have personal knowledge of Westborough SPE LLC, its activities, and its intentions, including those set out in the foregoing Verified Complaint for Declaratory and Other Relief, and if called on to testify I would competently testify about these matters.
4. I verify under penalty of perjury under the laws of the United States that the factual statements in this Complaint about myself, my activities, and my intentions are true and correct, as are the factual statements about Plaintiff, its activities, and its intentions. I have reviewed the allegations made in the complaint. As to those allegations of which I do not have personal knowledge, I rely on information and belief, and I believe them to be true. 28 U.S.C. § 1746.

**SIGNED UNDER THE PAINS AND PENALTIES OF PERJURY THIS 31st DAY OF
AUGUST 2023.**

/s/ Lolonyon Akouete

Lolonyon Akouete, Manager

VERIFICATION

Denise Edwards, being duly sworn, deposes and says:

1. I am the co-Manager of Westborough SPE LLC, a Delaware limited liability company, Plaintiff in the above-captioned case. I have authorized the filing of this complaint and in accordance with the limited liability company operating agreement of Plaintiff.
2. I have personal knowledge of myself, my activities, and my intentions, including those set out in the foregoing Verified Complaint for Declaratory and Other Relief, and if called on to testify I would competently testify about these matters.
3. I have personal knowledge of Westborough SPE LLC, its activities, and its intentions, including those set out in the foregoing Verified Complaint for Declaratory and Other Relief, and if called on to testify I would competently testify about these matters.
4. I verify under penalty of perjury under the laws of the United States that the factual statements in this Complaint about myself, my activities, and my intentions are true and correct, as are the factual statements about Plaintiff, its activities, and its intentions. I have reviewed the allegations made in the complaint. As to those allegations of which I do not have personal knowledge, I rely on information and belief, and I believe them to be true. 28 U.S.C. § 1746.

**SIGNED UNDER THE PAINS AND PENALTIES OF PERJURY THIS 31st DAY OF
AUGUST 2023.**

Denise Edwards

Denise Edwards, Manager